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OFFICE OF THE CHILDREN'S LAWYER

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ANNUAL REVIEW

1998/99

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MINISTRY OF THE
ATTORNEY GENERAL
LAW LIBRARY

MESSAGE FROM THE CHILDREN'S LAWYER

WILLSON A. McTAVISH, Q.C., LSM

The accent in family law today in Ontario is the child.

Public interest in Custody/Access cases, the changes in the Trustee Act about the duty of a trustee to be a "prudent investor", the serious and multiple findings in the Coroners' Inquests, and the many rulings of our courts - Supreme Court of Canada, Ontario's Court of Appeal, Superior Court of Justice and its Family Law Branch, and the Ontario Court of Justice - about the importance of the "best interests" of children over and above practically any other principle other than, perhaps, the finality of a Judgment about a child, are clear indicators that the Children's Lawyer for Ontario is being challenged by the importance and volume of child centred legal cases. At all times, we have 10,000 cases in the justice system and that caseload is increasing.

We continue to deliver a wide range of services from social work to law which include the skills of advocacy in the broadest sense. For the sake of the child and, in our view, in the interests of the child, we attempt to stop the fighting and obtain through Judgments and Court Orders negotiated or Judge imposed decisions that protect the physical, emotional and financial security of our child clients. In my view, we do so efficiently, with skill and knowledge not only of the law, but, also, of the resources available in the communities of Ontario to make those Judgments and Court Orders meaningful.

This Report is evidence of what we accomplished in fiscal year 1998/99.

To the lawyers and social workers who represent me on behalf of our child clients, I once again say thank you. You are the foundation of our advocacy.

If you are interested in our work, please do not hesitate to call me at (416) 314-8011.

OFFICE OF THE CHILDREN'S LAWYER

Our Heritage

The law of equity was introduced into Ontario in 1827; we now celebrate over 170 years of service to children in Ontario. The Children's Lawyer has formally existed since the first *Judicature Act* of 1881.

Accountable to the Attorney General, the Children's Lawyer represents the legal interests of children in the civil justice system. Before deciding "the best interests" of the child, judges attentively listen to our submissions and advocacy. It is, of course, the judges who are the ultimate substitute decision makers in cases where parents and guardians fail or deliberately refuse to protect and secure the personal and property rights of children. The administrative staff, social workers, and lawyers at the Office of the Children's Lawyer are totally committed to advocating on behalf of Ontario's children in the administration of justice.

Our Mission

"As provided for at law, the Office of the Children's Lawyer investigates, advocates, protects and represents, in proceedings before the courts and tribunals of Ontario, the personal and property rights and obligations of children".

Who We Are

The Office of the Children's Lawyer is an independent law office operating within the Family Justice Services Division (previously Social Justice Services Division) of the Ministry of the Attorney General. On behalf of children, the Children's Lawyer delivers legal and social work services in the family law and civil law areas of the administration of justice.

What We Do

In **Property Rights,** the Children's Lawyer may be ordered by the court or authorized by the Rules of Court to act as Litigation Guardian or may be requested by court order to act as legal representative for a child or an unborn child to pursue or defend a claim in civil and in estates and trust litigation.

In **Personal Rights**, the Court may request by order that the Children's Lawyer act as legal representative for children in private child custody and access disputes under s.89(3.1) of the *Courts of Justice Act* or in public child protection proceedings under s.38 of the *Child and Family Services Act.* In custody and access cases, social workers also conduct investigations and prepare reports under s.112 of the *Courts of Justice Act* as well as providing assistance in some cases to the child's lawyer.

Legislation And Rules

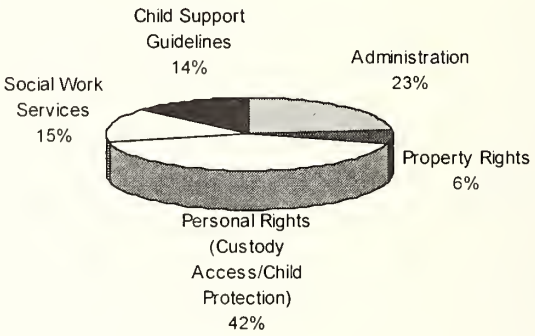
The following legislation and rules govern the work of The Children's Lawyer and the delivery of professional services.

- *Courts of Justice Act*
- *Child and Family Services Act*
- *Children's Law Reform Act*
- *Divorce Act*
- *Family Law Act*
- *Estates Act*
- *Estates Administration Act*
- *Succession Law Reform Act*
- *Trustee Act*
- *Insurance Act*
- *Variation of Trusts Act*
- *Rules of Civil Procedure*
- *Estate Court Rules*
- *Small Claims Court Rules*

FINANCIAL REPORT

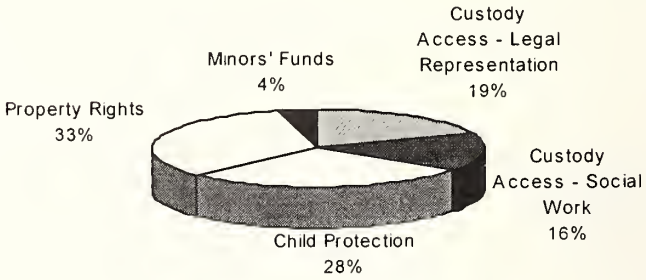
How The Dollar Was Spent

Expenditures ($11.7 million)



Cases Assigned

7,480 Cases Assigned - 1998/99



OCL ORGANIZATIONAL CHART

1998-99

Attorney General
Charles Harnick

Deputy Attorney General
Andromache Karakatsanis

Assistant Deputy Attorney General
Family Justice Services Division
Angela Longo

THE CHILDREN'S LAWYER
Willson A. McTavish

PERSONAL RIGHTS
"Legal Representative"

Legal Director
Dena Moyal

- 11 In-house Counsel
- 350 Panel Lawyers *(throughout Ontario)*
- 2 Students-at-law

PERSONAL RIGHTS
SOCIAL WORK

Clinical Co-ordinator
Lorraine Martin

- 11 In-house Social Workers
- 127 Outside Social Work Agents *(throughout Ontario)*
- 2 Social work students
- 1 Law & Social work student

PROPERTY RIGHTS
"Litigation Guardian"

Legal Director
Dianne Caldwell

- 7 In-house Counsel
- 70 Outside Agents *(throughout Ontario)*
- 1 Student-at-law

FINANCE/ACCOUNTS
& ADMINISTRATIVE
SERVICES

Chief Admin. Officer
Abby Katz Starr

- Executive Officer
- Team Leader – Accounts & Referrals & Intake
- 4 Accounts Clerks
- Systems Support
- Minors' Funds Law Clerks
- Law Clerks
- Administrative Assistant/ Secretaries
- Receptionist
- Mail clerk

OCL DEPARTMENT FUNCTIONS

PROPERTY RIGHTS

Litigation Guardian

The Children's Lawyer acts as litigation guardian for children involved in personal injury and medical malpractice cases, challenges to wills, audits, insurance disputes and pension benefits and other estate litigation.

On January 1, 1995, the Estate Court Rules added responsibilities to ensure that child beneficiaries receive their proper entitlement or share of an estate. In 1998/99, 2,482 new civil litigation and estate/trust cases were opened. Of these, 1,736 were Estate Notices under the new Rule.

In-house counsel handle cases in Toronto and the surrounding area. Agent lawyers are retained in other parts of the province to attend in court on the passing of estate accounts and in other cases when needed. Counsel maintain regular contact with our agent lawyers about the cases and keep up-to-date on local trends and issues among the Bench and Bar.

Children's (Minors') Funds

The Accountant of the Ontario Superior Court of Justice holds over $380 million to the credit of children. These funds were deposited into court as a result of insurance claims, estate inheritances, civil court actions, etc. When funds are required for the direct benefit of the children, our Office presents applications to a judge for an order for payment out of court. We processed 1,164 applications this fiscal year.

PERSONAL RIGHTS

Legal Representative

The lawyers, law clerks and panel lawyers in the Personal Rights Department acted on behalf of children in 1427 custody/access and 2101 child protection cases in this fiscal year.

Our panel of lawyers around the province provide representation to children in both custody/access and child protection matters. The panel receives regular mentoring and training from our in-house counsel who carry an active case load themselves. Contributions to policy development, outreach to the Bench and Bar, and ongoing evaluation of our service delivery helps us focus on ways to advocate clearly and effectively for our clients.

Social Work Services

Social work services in the Personal Rights Department accepted 1,131 social work reports and provided social work assistance on 511 legal files. The increase in collaboration between social work and law has provided a more efficient and effective service to children of high conflict divorce and separation.

Our in-house social workers in Toronto consult regularly with our social work agents across the province about cases, conduct research, and give advice about procedures and policy.

A number of our social workers have been trained and have gained experience in dispute resolution. In the interests of our child clients, they work with the parties and their lawyers to resolve custody and access issues. They provide more timely, regional professional services on behalf of our child clients to the courts.

OCL NEW INITIATIVES

Technology

January 2000 is looming and the Office of the Children's Lawyer is reviewing and enhancing its year 2000 project plans. Our mission is to ensure the delivery of uninterrupted service to our clients.

Through the development of skilled teams, the Office has designed, implemented and tested all Year 2000 related continuity plans.

The Office has designed a more technologically advanced database to achieve a more efficient and faster service delivery to the program and its clients. This new database is already in production and the benefits it is meant to produce are already showing themselves.

Psychiatric Pilot Project

Over the years, the Office of the Children's Lawyer has been acutely aware of the impact of psychiatric illness on parents in both private custody/access and public child protection proceedings.

This past year a panel of psychiatrists has been established to assist the Office through a pilot project. In some circumstances, the psychiatrists will be available for consultations to help assess the impact of a parent's psychiatric illness on the child. The consultation may vary from a paper review or discussion to a psychiatric interview. The Office is evaluating the effectiveness of this service in both the social work and legal context.

Research Pilot Project

The Children's Lawyer is continually examining the services being provided to all our stakeholders in the justice system. With this mind, the Family Court Clinic and the Children's Lawyer embarked on a collaborative research pilot project this year in access-based disputes before the court. As a result of the pilot project, the Department of Justice provided some financial assistance to undertake a more rigorous design in evaluating Access Based Disputes.

OCL STAKEHOLDER INVOLVEMENT

The Office of the Children's lawyer continues to share its experience with many organizations by conducting a variety of presentations and participating in many outreach initiatives with it's many stakeholders.

Community And Professional Partnerships

Dena Moyal, Legal Director (Personal Rights), sits on the Hospital for Sick Children – Suspected Child Abuse and Neglect Advisory Committee. She contributes to the Operations Committees for both the Superior and Ontario Court of Justice and acts as a Dispute Resolution Officer in the Superior Court. She is a member of the Ethics Review Committee for Human Research at the University of Toronto.

Dan Goldberg, Senior Counsel in the Personal Rights Department, continues on the Executive of the Canadian Bar Association Family Law Section.

Catherine Bellinger, Personal Rights Counsel, sits on the Board of Directors of the Centre for Child and Family Mediation.

Catherine Bellinger and Elizabeth McCarty, Counsel, both sit as members of the Ontario Hospital Child Protection Protocol committee.

Elizabeth Keshen, Counsel, is our representative on the Limbo Task Force of the Sparrow Lake Alliance.

Linda Feldman, Counsel, presented at a Continuing Legal Education Conference on Government Programs: What Family Law Lawyers Need to Know.

Carolyn Leach, Counsel, is on the Board of Directors for theToronto Distress Centre.

Tracy Houlding, Counsel, has presented to University of Toronto Medical Students on Infant Maltreatment.

Lorraine Martin, Clinical Co-ordinator, Social Work Services maintained her involvement in the professional mediation community and the Association of Family and Conciliation courts. She earned her "Comprehensive Family Mediation" status with the Family Mediation Canada Accreditation Pilot Project. She acted as a resource to the Ministry's Family Mediation Initiative. She attended the Annual Conference in St. John's, Newfoundland and continued efforts assisting in the development of national certification of family mediators. She was a member of Justice Lang's sub-committee to develop a Family Mediation Roster in Toronto and a resource to the province's continuing development of mediation policies and services.

Pauline Walsh, was on the Professional Practice and Conduct Committee of the College of Certified Social Workers and on the board of Access for Parents and Children in Ontario

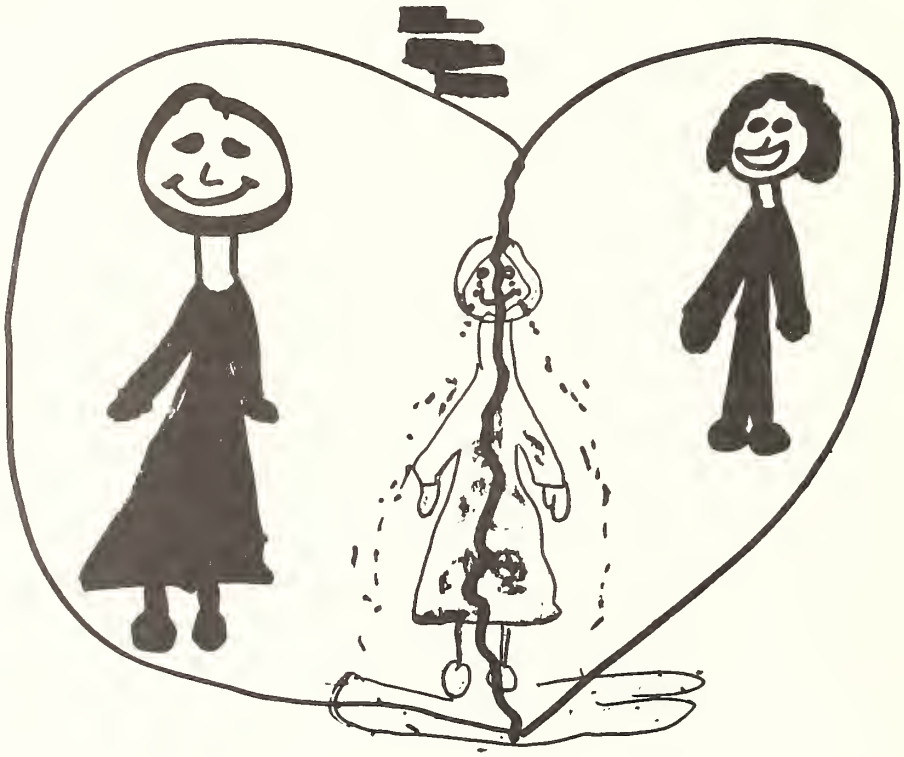
Dianne Caldwell, Legal Director (Property Rights), with the assistance of other counsel, provided input and recommendations to Ministry staff on various proposed legislative amendments with potential impact on children's property rights. Dianne sat on the Case Management Operations Committee for the General Division Court. She presented at several Law Society and CBAO education programs during the year on estates and insurance topics.

Ann Lalonde, Property Rights Counsel, sat on the Estates Subcommittee of the Civil Rules Committee, and on the Investment Advisory Committee of the Public Guardian and Trustee. She also presented at an education seminar for Estates Court Judges on the topic of contested passings of

accounts.

Brian Todd, Property Rights Counsel, sat on the ALOC Board of Directors.

Priti Sachdeva, Property Rights Counsel, served on the Board of Directors of the Toronto Distress Centre.



Dispute Resolution Forum

The Office of the Children's Lawyer participated in the Dispute Resolution Open House held at Queen's Park in Toronto on January 20, 1998. It showcased 20 different programs within the Ontario Public Service practising Dispute Resolution. Over 250 individuals attended the successful event.

Intra-Ministry Activities

Catherine Bellinger, Personal Rights Counsel, served on the Ontario Advisory Committee of the Federal, Provincial, Territorial Committee dealing with Child Victimization.

Linda Feldman, Personal Rights Counsel, sat as the Family Justice Services representative on the Integrated Justice Policy Committee and on the inter-ministerial working group on domestic violence, as well as acting as the Ministry of the Attorney General representative on the Family Rules Committee.

Lorraine Martin continued in her role as consultatnt to Courts Administration on policy and program development for family Mediation

Judy Newman, a social worker has been acting on a full time secondment as the Co-ordinator for the Ministry's Supervised Access program for the past year.

EMPLOYMENT PROGRAMS

Articling Students

In 1998 - 1999 three law students

Shelley McIntyre
Lisa Valentini
Cheryl Williams

joined us for their articles.

As well, Deborah Bennett, a student articling with the Policy Branch at the Ministry of the Attorney General, joined our office for a three month rotation during her articles.

The articling students carried a significant caseload in four month rotations working on estates and civil litigation matters and custody/access and child protection cases under the close supervision of lawyers in the Office. Articling students receive in-depth training in all aspects of the law and procedure relating to the work of the Office of the Children's Lawyer as well as specialized skills training on the use of mediation techniques and interviewing children.

Social Work Placements

Three Masters students joined us this year for their field placements.

Cheryl Gzik
(M.S.W. Student, York University, Toronto)

Shirin Perston
(M.S.W. Student, University of Toronto)

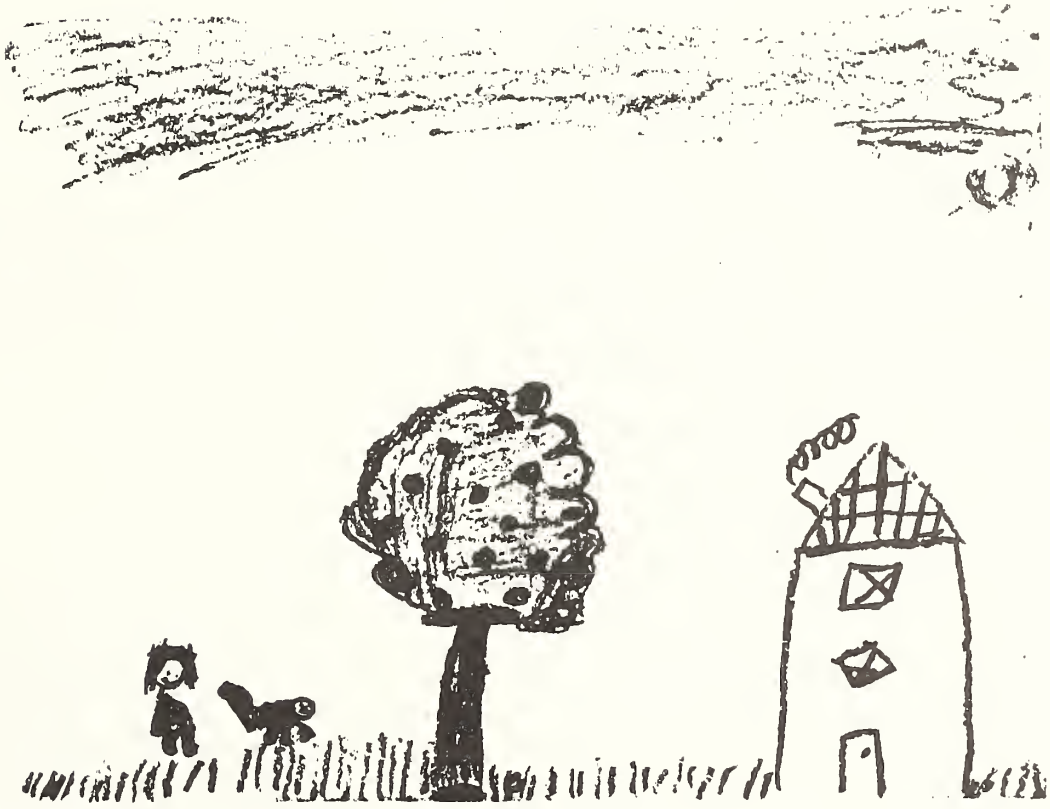
Sara Zborowski
(combined LLB and M.S.W. student, University of Toronto)

Co-Op Students

Through student employment programs, we received valuable administrative assistance from 1 student. In turn, we were able to give them exposure to the operations of a government office.

Runnymede Collegiate

- *Thao Ly*



SPECIAL EVENTS

Office Picnic

The annual Office of the Children's Lawyer summer picnic was held in July in the heart of beautiful and spacious High Park. Staff and children attended in record high numbers and enjoyed culinary delights prepared in traditional Children's Lawyer pot luck fashion.

Annual Staff Workshop

On December 17th, 1998 the entire staff of the OCL once again worked together to create an enjoyable and entertaining afternoon workshop. ***Jana Vicknarajah*** was chosen "Employee of the Year" by her fellow employees. This is team work at its best!

Fundraising

Our Office enthusiastically supported the Federated Health and United Way Campaigns and raised $2,211 and $2,956 respectively. We held our annual raffle which raised $2,100 in aid of the Children's Wish Foundation. OCL staff also donated to the UN World Food Program - "Doctors without Borders" who are actively involved in Sudan and the Red Cross Program - the Hurricane Mitch Relief Fund. In addition, OCL staff participated in the CIBC Run/Walk for Cure for Breast Cancer (in memory of one of our staff) as well as a number of memorial donations for deceased family members of our staff.

OCL STAFF

1998-99

Executive Committee

Dianne Caldwell
Abby Katz Starr
Lorraine Martin
Willson A. McTavish
Dena Moyal
Monique Wilson

Legal Staff

Lorraine Anderson
Catherine Bellinger
Heidi Brown
Annemarie Carere
Judith Falkner
Linda Feldman
Elaine Freedman
Dan Goldberg
Martha Heder
Tracy Houlding
Marian Jacko
Elizabeth Keshen
Ann Lalonde
Carolyn Leach
Elizabeth McCarty
Priti Sachdeva
Brian Todd
Linda Waxman

Social Work Staff

Adrienne Ambrozic
Lesley Barker-Thomas
Rachel Birnbaum
Joyce Curry
Melita Donaldson
John Harding
Jacqueline Hoffman-Fitz
Pamela Kernaghan
Judith Newman
Judith Szende
Pauline Walsh

Administrative Support Staff

Vicky Agustin*
Sharon Anderson*
Rina Arzoumanian
Lenora Barker
Pamela Ciccarelli*
Delores Clarke
Nancy Dempster
Sumintra Earle
Vicky Gibson*
Bryant Greenbaum
Razia Gulamhusein
Mathanan Kailas
Mark Katschkan*
Lynne Lambe
Martha Léger
Ward Mousseau
Delma Muñoz*
Serena Ng
Cecile Ng Pan Hing
Mohammed Noray*
Yashoda Pandit*
Linda Patchett
Yvonne Pawaroo
Wendy Phillips
Anna Postiglione
Elizabeth Pulsifer
Lola Shaw
Deborah Stanley
Doré Toscano
Jana Vicknarajah*
Monique Wilson
Pansy Wong
Eva J. Wright

* "The Alans Award" recipients. Donated by Judge Alan Ingram and Alan Wolfish in 1988, the award is annually presented to the administrative employee who most displays co-operation, congeniality, dedication, humour and initiative.